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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/247,418	02/10/1999	HOLGER EGGERS	MO-5041/WW-5	7618

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EXAMINER

KRUEER, KEVIN R

ART UNIT

PAPER NUMBER

1773

DATE MAILED: 05/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/247,418

Applicant(s)

EGGERS ET AL.

Examiner

Kevin R Kruer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-10, 12-24 and 26-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2-10, 12-24 and 26-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 31, 2, 3, 6-10, 13, 15, 17, 18, 19, 20, and 23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobreski et al. (US 5,334,428) for reasons of record.
2. Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobreski et al. (US 5,334,428), as applied to claims 31, 2, 3, 6-10, 13, 15, 17, 18, 19, 20, and 23 above, and further in view of Simmons (US 5,273,809) for reasons of record.
3. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dobreski et al. (US 5,334,428), as applied to claims 31, 2, 3, 6-10, 13, 15, 17, 18, 19, 20, and 23, above. Dobreski is relied upon as above for reasons of record.
4. Claims 31, 2-10, 12, 13, 14, 17, 18, 19, 23, 26, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paleari et al. (US 6,110,570) in view of Hodgson, Jr (US 5,206,075) for reasons of record.
5. Claims 31, 2-11, 13, 15, 17-21, 23, 26-28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chum et al. (US 5,089,321) for reasons of record.
6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chum et al. (US 5,089,321), as applied to claims 31, 2-11, 13, 15, 17-21, 23, 26-28, and 30 above, for reasons of record.

Response to Arguments

Applicant's arguments filed February 21, 2003 have been fully considered but they are not persuasive. Applicant argues that an overlapping or overwrapping Dobreski cling film does not change the identity of film. The examiner agrees, but Applicant fails to explain why said argument distinguishes the claimed laminate from the closest embodiment taught in Dobreski. Applicant does not point out any limitations of the claimed invention that the "sealed" embodiment of Dobreski fails to met. Thus, the examiner maintains the position that the Dobreski renders the rejected claims obvious when cling film is adhered to another cling film.

Applicant further argues that when the cling film of Dobreski is "overwrapped" the film, at best, has the same MFR in the inner layer as the outer layer. The examiner respectfully disagrees. The two outer layers clung together (herein relied upon to read on the claimed "inner ply") would have a melt index of greater than about 2.5, and the intermediate layers (herein relied upon to read on the claimed "outer ply") would have a melt index of 0.5-2.5.

With respect to claim 16, Applicant argues that the examiner provides no evidence to support the cited motivational statement. The examiner was relying upon what was known in the art. Metallocenes are well known especially in the preparation of ethylene-alpha olefin copolymers. The catalysts are high flexible in that they can provide polymers with controllable molecular weights and molecular weight distributions (see US 5,451,450; col 5, lines 1+). By controlling the molecular weight and molecular

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weight distribution, one of ordinary skill in the art would know how to customize the copolymer to obtain the properties desired.

Applicant further argues that the rejection based upon Paleari in view of Hodgson requires hindsight in that there is no motivation to select a resin having a melt flow of 0.5-0.9g/10min. The rejection does not rely upon Hodgson for such a teaching. Rather, the examiner took the position that the film taught by Paleari in view of Hodgson reads on the claimed invention when the heat seal layer is adjacent to a substrate. In such an embodiment, the heat seal layer taught by Paleari in view of Hodgson reads on the claimed "inner" layer and the inner layer taught in Paleari reads on the claimed "outer" layer.

Applicant further argues that the examiner relies upon "creative prior art." The examiner respectfully disagrees. Applicant's claims are drawn to a laminate comprising 3 layers, wherein the "inner" layer has a higher melt index than the "outer" layer. Applicant gives no reason why the art of record fails to meet the present claim language. Rather, Applicant argues that the examiner's interpretation of the reference changes the fundamental character of the art. This simply is not the case. The examiner relies upon the embodiment of Paleari wherein the heat sealable layer has been applied to a substrate; a use for which the heat sealable layer is implicitly designed. Applicant has not explained how the claimed laminate is patentably different from the embodiment relied upon by the examiner. Therefore, the rejection is maintained.

With respect to Chum, Applicant argues that the outer layer of Chum has a higher, not lower, MFR. The examiner respectfully disagrees with Applicant's interpretation of the reference. The terms "inner" and "outer" are relative terms that describe the location of the layer with respect to the other layers. The examiner maintains Chum reads on the rejected claims because Chum teaches a laminate comprising the same layers arranged in the same relative position with respect to one another. Thus, the rejection is maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is (703) 305-0025. The examiner can normally be reached on Monday-Friday from 7:00 a.m. to 4:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is (703)305-5436. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.



Kevin R. Kruer



Paul Thibodeau
Supervisory Patent Examiner
Technology Center 1700